

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

OLAJUWON FOY,

Plaintiff,

VS.

MARTY ALLEN, TONJA WILLIAMS,
and JAMES FOSTER,

Defendants.

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7 : 13-CV-52 (HL)

RECOMMENDATION

Presently pending in this action brought pursuant to 42 U.S.C. § 1983 is a Motion to Dismiss filed on behalf of the Defendants. (Doc. 16). As neither Certificate of Service initially filed by the Defendants (Docs. 16, 18) indicated that the Motion to Dismiss was served on the Plaintiff by mailing same through the U.S. Postal Service, the Defendants were ordered to file a Certificate of Service reflecting the correct date on which the Motion to Dismiss was served on the Plaintiff via the U.S. Postal Service, using his last known address at the time. Defendants filed an Amended Certificate of Service on January 10, 2014. (Doc. 23).

Review of this Amended Certificate of Service, however, reveals that the Defendants have not provided the Court with the requested certification that Plaintiff was served via the U.S. Postal Service using Plaintiff's last known address at the time the Motion to Dismiss was filed. The Amended Certificate of Service references service of the Plaintiff by mail on the date the Motion to Dismiss was filed, but indicates service on Plaintiff at his most recent address rather than his address at the time the motion was filed. Thus, despite filing three certificates of service, the Defendants have not provided proper and complete certification to the Court that the Plaintiff was properly served with the Motion to Dismiss pending herein. *See* Docs. 16, 18, 23. The Court

notes that the Plaintiff did not file a response to the Motion to Dismiss, and indicates that he has not been receiving his mail. (Doc. 21).

Inasmuch as the Court has no confirmation that the Plaintiff was ever actually served with the Defendants' Motion to Dismiss, it is the recommendation of the undersigned that the Defendants' Motion to Dismiss be **DENIED without prejudice** to their right to refile the motion. If the district judge to whom this matter is assigned adopts this Recommendation, the Defendants shall have **21 days from the date of the Order adopting the Recommendation** to file an Answer or pre-Answer Motion to Dismiss.

Objections

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to the recommendations herein with the Honorable Hugh Lawson, United States District Judge, WITHIN FOURTEEN (14) DAYS after being served with a copy of this Recommendation.

SO RECOMMENDED, this 14th day of January, 2014.

s/ ***THOMAS Q. LANGSTAFF***

UNITED STATES MAGISTRATE JUDGE

asb